

2020 Judiciary Working Group Minority Report

Senator Grant Burgoyne, Senator Mark Nye, Representative John Gannon, Representative John McCrostie, Representative Melissa Wintrow, Representative Muffy Davis

The minority of the Judiciary and Rules Working Group submit the following objection to the majority's recommendation to advance Draft #11 on July 30th, 2020:

- i. We support a more limited legislative scope than the draft legislation endorsed by the majority. The proposed bill will widen the already expansive emergency powers granted to the government during times of emergency, weaken the overall ability of citizens to protect their rights in court, and guarantee unexpected and unintended consequences in the future. We recommend that liability immunity legislation considered in a special session be limited to the current COVID-19 pandemic.
- ii. We are concerned that the length and wordiness of the draft legislation will create more legal arguments and potential ways to defeat an early motion to dismiss a case. Draft 11 is overly reliant on nebulous terms like "good faith" and "considered determination." This will lead to more trials, more litigation costs, and more jury verdicts finding liability.
- iii. We value the advisory nature of non-statutory regulations and local rules, and do not wish to see them nullified as a legal benchmark for reasonable conduct. The guidelines of agencies like the Idaho Department of Health and Welfare and the decisions of responsive, regional health districts should serve as the legal baseline for safe and responsible conduct during this time of crisis.
- iv. We advocate for the inclusion of a July 1, 2022 sunset clause in any liability immunity legislation enacted in a special session.
- v. We recommend that the majority's draft bill expressly state that it only applies to negligence claims so that its use of the term "civil liability" is not, by judicial construction, deemed to include contract claims.
- vi. We encourage greater consideration to be given to concepts in COVID-19 civil liability immunity legislation from other states, especially neighboring states like Utah. The preservation of legal continuity across state lines will reduce undue burden on citizens and businesses engaged in cross-border commerce.

We believe that the aforementioned recommendations can be incorporated into potential legislation prior to the commencement of a special legislative session, and that such amendments will aid in passage of such legislation to better serve the people of Idaho.